



COUNTY ADVISORY BULLETIN

CAB

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BULLETIN 2012-09

November, 2012

DANGEROUS AND VICIOUS DOG LAW UPDATE

APPLICABLE LEGISLATION: Am. Sub. HB 14

REVISED CODE SECTIONS: ORC Sections 955.08, 955.11, 955.22, 955.99, 1901.18, and 1907.031 amended and sections 955.222 and 955.54 enacted.

SPONSORS: Sears

Reps. Speaker Batchelder, Bubp, Duffey, Gardner, Garland, Szollosi, Wachtmann, Winburn

Sens. Coley, Jordon, LaRose, Seitz, Wagoner

EFFECTIVE DATE: May 22, 2012

BULLETIN SUMMARY

On May 22, 2012, HB 14, the dangerous and vicious dog law, became effective. The Act changed a 25 year old law defining a pit bull as a vicious dog as a matter of state law. The debate over the designation of pit bulls as vicious dogs in state law has been a controversial issue in the General Assembly for nearly a decade. Former Representative Shawn Webster (R-Hamilton), a licensed veterinarian, led the battle to change the law while he served in the Legislature from 2001-2008.

Beginning with legislation proposed in the 126th General Assembly in 2005 by Representative Webster, legislation to repeal the statutory designation of pit bulls as vicious dogs had been considered by the General Assembly, but had not been enacted. Representative Barbara Sears (R-Sylvania) introduced legislation during the 128th General Assembly that did not pass, and then introduced HB 14 early last year which was enacted into law.

The primary reason prior legislation was not enacted was because of significant opposition from dog wardens and law enforcement. CCAO had joined with these groups in opposition to removing the breed specific designation of pit bulls as vicious dogs at the urging of the Ohio County Dog Wardens Association (OCDWA), a CCAO affiliate organization. In prior sessions of the General Assembly CCAO had testified as an opponent of the bill, and we continued that position when HB 14 was introduced.

However, when hearings commenced on HB. 14 it became apparent that there was broader bipartisan support for the change than in the past. Ohio was the only remaining state where pit bulls, as a breed, were defined as vicious as a matter of state law. Also, it appeared there was more acceptance of the contention by the veterinary profession and various dog owner groups that environmental factors were more important than heredity and breed in determining dangerous behavior by dogs. CCAO worked with other interest groups to craft legislation that would protect the public safety given the fact that it appeared likely the bill would pass during this session of the Legislature.

This CAB highlights changes in the law regarding the defining of “nuisance,” “dangerous,” or “vicious” dogs; the process by which owners, keepers, or harborers (hereafter “owner(s)”) of such dogs may appeal such a designation; the requirement of owners of a “dangerous” dog to obtain a dangerous dog registration; the prohibition of certain felons from owning dogs under certain conditions; and, changes in the penalties involving ownership of “nuisance,” “dangerous,” or “vicious” dogs.

Also included are three exhibits at the end of this CAB that show the process by which dogs were designated as dangerous and vicious prior to the enactment of HB 14, and designated nuisance, dangerous, or vicious under HB 14.

BACKGROUND

CCAO, along with the Ohio County Dog Wardens Association expressed opposition and strong concern with HB 14 when the bill was introduced. While, the elimination of pit bull breed specific legislation historically had been opposed by CCAO and OCDWA, the associations pointed out the even greater public safety risk that this legislation, left unamended, would have caused given the current constitutional deficiencies in Ohio’s law.

While HB 14 seemingly only eliminated breed-specific language in Ohio’s vicious dog statutes, the effect of the as-introduced bill was to render an already weakened law, dangerously ineffective.

This was because Ohio’s dangerous/vicious dog statutes had been under constitutional fire for some time. Under prior Ohio law (ORC 955.11(A)(4)(a)), a vicious dog was defined as a dog that, without provocation, met any of the following conditions:

1. Has killed or caused serious injury to any person.
2. Has caused injury, other than killing or serious injury, to any person, or has killed another dog.

3. Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.

In *State v. Cowan* (814 N.E.2d 846), the Ohio Supreme Court (Court) deemed ORC Section 955.11(A)(4)(a)(i) and (ii), unconstitutional. The Court found that, under these two provisions (1 and 2 above), a dog warden alone would act as arbiter of fact as to whether a dog had committed the specified offenses with no appeal or hearing process. Because dogs are considered personal property, this unilateral action by the dog warden would not meet the due process test for the deprivation of property (*Mathews v. Eldridge*, 425 U.S. 319).

In *Youngstown v. Traylor* (914 N.E.2d 1026), the Court clarified its concerns with due process in reviewing a Youngstown ordinance on vicious dogs. In *Youngstown*, the Court pointed to exceptional pre-hearing burdens on dog owners, such as requiring liability insurance for pit bulls that was required under the statute, as objectionable under *Cowan*. The Court distinguished the Youngstown ordinance from this provision of state law because “Youngstown City Ordinance (YCO) 505.19 does not create pre-hearing burdens on dog owners, such as requiring liability insurance for particular breeds... (*Id.* at 1030).”

The Court also noted that “YCO 505.19 does not classify or label dogs as vicious. Dogs are rendered vicious under the ordinance by their propensity to attack or by their attack (*Id.* at 1030).” In distinguishing the Youngstown ordinance from the pre-hearing burdens of ORC Section 955.22, the Court pointed to a reasonable standard of care saying that: “A responsibility of dog ownership is to maintain and control the animal. This (Youngstown) ordinance requires no more and no less, and therefore it does not violate due process. (*Id.* at 1030).

While ORC 955.22(D) had been found unconstitutional as applied to non-pit bulls, the Court upheld the provision of state law that defined pit bulls as vicious (ORC 955(A)(4)(a)(iii)) in *City of Toledo v. Tellings* (114 Ohio St. 3d 278). The Court distinguished *Tellings* from *Cowan* by noting: “Unlike the situation in *Cowan*, the General Assembly has classified pit bulls generally as vicious; there is no concern about unilateral administrative decision-making on a case-by case basis... Therefore, the laws do not violate the right of pit bull owners to procedural due process (*Id.* at 284).”

The resulting situation rendered county dog wardens with very limited authority to deal with vicious and dangerous dogs. Thus, the removal of pit bulls from the definition of a vicious dog as proposed under HB 14 would leave the state with no legal mechanism for dealing with such animals. While CCAO and OCDWA repeatedly had attempted to remedy this constitutional due process flaw in Ohio’s law, past legislative attempts unfortunately had proven unsuccessful for a myriad of reasons.

Given the potential likelihood of HB 14 passage, CCAO and OCDWA chose, while still opposing the removal of pit bull from the definition of vicious dog, to work with the sponsor of the legislation to address due process concerns and other flaws, as well as take the opportunity to enhance certain provisions of the law, rather than risk an impermissible public safety risk.

OHIO'S DANGEROUS/VICIOUS DOG LAW PRIOR TO REFORM

Definitions (ORC Section 955.11)

As noted, HB 14 made numerous changes to Ohio's dangerous/vicious dog laws. Under prior law, a vicious dog was defined as a dog that, without provocation:

1. Has killed or caused serious injury to any person:
2. Has caused injury, other than killing or serious injury, to any person, or has killed another dog.
3. Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.

A dangerous dog was defined a dog that, without provocation:

Has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harbinger, and not under the reasonable control of its owner, keeper, harbinger, or some other responsible person, or not physically restrained or confined in a locked pen which has a top, locked fenced yard or other locked enclosure which has a top.

(Both definitions exempted a police dog being used to assist law enforcement officers in the performance of their official duties. In addition, a dog that killed or caused serious injury to any person who was committing or attempting to commit a trespass or other criminal offense on the property of the owner of the dog was exempted from the definition of a vicious dog.)

Maintenance Requirements Under Prior Law (ORC Section 955.22)

In addition, the prior law (ORC 955.22(D)) placed the following maintenance requirements (subsequently objected to by the Court) on dangerous and vicious dogs:

Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of a dangerous or vicious dog shall fail to do either of the following:

1. While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that dog is adequately restrained.
2. While that dog is off the premises of the owner, keeper, or harbinger, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

- a. Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
- b. Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie , or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
- c. Muzzle that dog.

In addition, the owner of a vicious dog was required to obtain liability insurance providing coverage for each occurrence of not less than \$100,000 for damage, bodily injury, or death of a person caused by the vicious dog.

Penalties (ORC Section 955.99)

Violations and subsequent penalties associated with Ohio’s dangerous and vicious dog law were enumerated within ORC Section 955.99. These penalties were based not on the behavior of the animal as in *Youngstown*, but rather on the failure to comply with the maintenance requirements prescribed under ORC Section 955.22(D) and (E).

OHIO’S NEW NUISANCE/ DANGEROUS/VICIOUS DOG LAW

Definitions (ORC Section 955.11)

Because the new law’s penalties were specific to behavior, definitions of dangerous and vicious dogs were modified and a new definition of a “nuisance dog” was added to the code.

“Nuisance dog” is defined as a dog that without provocation and while off the premises of its owner has chased or approached a person in either a menacing fashion or an apparent attitude of attack or has attempted to bite or otherwise endanger any person

“Dangerous dog” is defined as a dog that, without provocation has done any of the following:

1. Caused injury, other than killing or serious injury, to any person;
2. Killed another dog;
3. Has been the subject of a third or subsequent nuisance dog violation.

Finally, a “vicious dog” is defined as a dog that, without provocation has killed or caused serious injury to any person (*Please note that pit bulls have been removed as a per se vicious dog*).

(Note that police dogs engaged in specific behavior are exempted from these definitions as well as dogs engaging in prohibited behavior against a trespasser.)

Maintenance and Enhanced Public Safety Requirements (ORC Section 955.22)

Generally, there are no maintenance requirements placed on the owner of a nuisance dog.

However, after the third or subsequent nuisance dog violation, the dog then becomes defined as a dangerous dog and subject to those associated maintenance requirements (ORC Section 955.99 (F)).

For a dangerous dog, some maintenance requirements remain the same from prior law:

1. While that dog is on the premises of the owner, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained.
2. While that dog is off the premises of the owner, keep that dog on a chain-link leash or tether not more than six feet in length and additionally do at least one of the following:
 - a. Keep that dog in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top;
 - b. Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station a person in close enough proximity to that dog so as to prevent it from causing injury to any person;
 - c. Muzzle that dog.

However, under the new law, there are many new maintenance requirements placed on the owner of a dangerous dog. The court may order the owner of a dangerous dog to obtain liability insurance providing coverage in each occurrence, because of damage or bodily injury to or death of a person caused by the dangerous dog. In addition, the law requires the owner to provide proof of insurance upon request by a law enforcement officer, county dog warden, or public health official.

The new law also requires the owner to obtain a dangerous dog registration certificate at a fee of \$50 (*to be deposited in the dog and kennel fund*) from a county auditor each year. The owner must affix a tag that identifies the dog as a dangerous dog to the dog's collar, and ensure the dog wears the collar and tag at all times. Dangerous dog registration certificates may only be granted to persons 18 years of age or older. The owner is also required to present the dangerous dog registration certificate upon request by any law enforcement officer, dog warden, or public health official. Failure to do so is a minor misdemeanor.

The applicant for a dangerous dog registration certificate must provide the following information:

1. The person's address, phone number, and other appropriate means for the local dog warden or county auditor to contact the person;
2. Either satisfactory evidence of the dog's current rabies vaccination or a statement from a licensed veterinarian that a rabies vaccination is medically contraindicated for the dog;
3. Either satisfactory evidence of the fact that the dog has been neutered or spayed or a statement from a licensed veterinarian that neutering or spaying of the dog is medically contraindicated;

4. Satisfactory evidence of the fact that the person has posted and will continue to post clearly visible signs at the person's residence warning of the presence of a dangerous dog on the property;
5. Satisfactory evidence of the fact that the dog has been permanently identified by means of a microchip and the dog's microchip number.

The measure further requires the owner of a dangerous dog to notify the local dog warden immediately if any of the following occurs:

1. The dog is loose or unconfined.
2. The dog bites a person, unless the dog is on the property of the owner of the dog, and the person who is bitten is unlawfully trespassing or committing a criminal act within the boundaries of that property.
3. The dog attacks another animal while the dog is off the property of the owner of the dog.
4. If the dog is sold, given to another person, or dies, notify the county auditor within 10 days of the sale, transfer, or death

(The bill also declared that an owner of a dog who was required to comply with the requirements pertaining to a vicious dog prior to the effective date of the bill are still required to comply with requirements under the new law pertaining to a dangerous dog, unless the dog had been deemed a vicious dog solely on the basis that the dog was a pit bull.)

Furthermore, the new law addresses past concerns with the movement of dangerous dogs from jurisdiction to jurisdiction. If the owner of a dangerous dog for whom a registration certificate has previously been obtained relocates to a new address:

1. Within the same county, the owner must provide notice of the new address to the county auditor within 10 days of relocating to the new address.
2. Within another county, the owner is required to do both of the following within 10 days of relocating to the new address:
 - a. Provide written notice of the new address and a copy of the original dangerous dog registration certificate to the county auditor of the new county;
 - b. Provide written notice of the new address to the county auditor of the county where the owner previously resided.

Public Hearing Process (ORC Section 955.222)

In addition to addressing constitutional concerns by removing pre-hearing maintenance burdens, applying a reasonable care standard, and thus making behavior of the dog the premise for violations, the bill also provides for a public hearing process on the designation of an animal as nuisance, dangerous, or vicious dog.

First, the bill specifies that the municipal or county court that has territorial jurisdiction over the residence of the owner of a dog has jurisdiction over any hearing concerning the designation of the dog as a nuisance dog, dangerous dog, or vicious dog.

The bill requires a dog warden or a person who has reasonable cause to believe that a dog is a nuisance dog, dangerous dog, or vicious dog to notify the owner, by certified mail or in person. The notification must state that the dog has been designated as a nuisance dog, dangerous dog, or vicious dog, and that the owner may request a hearing regarding the designation. The notice must also provide procedures for requesting the hearing and appealing the designation. If the owner appeals the designation, the owner must maintain the dog as a dangerous dog while awaiting the hearing, but will not be required to comply with other requirements such as liability insurance, dangerous dog registration, etc. until final adjudication.

However, the bill also requires the owner of a dog confined at the county dog pound before the court determines if the owner has committed a violation of ORC Chapter 955.22(C) regarding the maintenance of a dangerous or vicious dog to provide a security deposit of \$100 to the dog warden. The purpose of the deposit is to secure payment of all reasonable expenses incurred in keeping the dog while awaiting appeal. The law also specifies that failure to provide this security will result in forfeiture of the dog.

At the end of the confinement period of a dog held awaiting appeal and upon the release of the dog to the owner, the dog warden must provide the owner with the actual cost of the confinement of the dog. If the actual cost is more than \$100, the owner must pay the difference to the dog warden, and if the actual cost is less than \$100, the dog warden must refund the difference to the owner.

As an alternative, the Act permits a court, upon motion of an owner or an attorney representing the owner to order that the dog designated as a nuisance dog, dangerous dog, or vicious dog by the dog warden or other person be held in the possession of the owner until the court makes a final determination or during the pendency of an appeal.

Penalties (ORC Section 955.99)

In order to address constitutional concerns as expressed by the Ohio Supreme Court, the penalty section of Ohio's law has essentially been re-written to provide a two track system. The first track or process applies to initial incidents, applying a reasonable care standard, and penalizes owners for the dog's behavior.

The second track or process, applies after the dog is designated a dangerous or vicious dog, and provides for penalties based on a heightened care standard. Both tracks provide for a due process hearing for owners who object to the designation of their dog (*For a diagram of the pre-HB14 process and the post-HB14 processes, please see Appendices A and B*).

For a nuisance dog, the owner is guilty of a minor misdemeanor on the first offense and a fourth degree misdemeanor on the each subsequent offense involving the same dog. Upon the third violation, the court must require the owner to register the dog as a dangerous dog. In addition, the court may order the owner of a dog designated as a nuisance dog to personally supervise the dog or make it complete dog obedience training.

For a dangerous dog, the owner is guilty of misdemeanor of the fourth degree on a first offense and a third degree misdemeanor on each subsequent offense. The court also may order the

owner of a dog designated as a dangerous dog to personally supervise the the dog or make it complete dog obedience training. The court may also order the owner to obtain liability insurance or may order the dog to be humanely destroyed at the owner's expense.

In addition, as noted, when the violation involves a dangerous dog, until the court makes a final determination and during the pendency of any appeal, and at the discretion of the dog owner, the dog shall be confined or restrained as a dangerous dog, or confined at the county dog pound a the owner's expense.

Finally, for a vicious dog, the owner is guilty of a felony of the fourth degree if the dog kills a person and the court shall order the animal humanely destroyed at the owner's expense. The owner is guilty of a misdemeanor of the first degree if the animal causes serious injury to a person. In the event of a serious injury, the court may order the dog to be humanely destroyed at the owner's expense, however if the court does not order the vicious dog to be destroyed, the court shall issue an order that the animal shall be maintained as if it were a dangerous dog, and the court shall order liability insurance in an amount that equals or exceeds \$100,000.

In addition, failure to obtain a dangerous dog registration subjects the owner to a fourth degree misdemeanor. Failure to show such registration to a law enforcement officer, dog warden or public health official is a minor misdemeanor. Failure to obtain liability insurance when so ordered by a court or the failure to notify a dog warden when a dangerous or vicious dog is loose, bites a person, or attacks another animal off the property of the owner is also a minor misdemeanor.

Miscellaneous (ORC Sections 955.08, 955.54)

The measure also increases the fee for replacement of a lost metal dog tag as well as the transfer of ownership certificate fee from 25 cents to \$5. These funds are required to be deposited within the dog and kennel fund.

In addition, the Act prohibits a person who has been convicted of or pleaded guilty to a felony offense or a felony violation of any provision of the following:

- ORC Chapter 959 (offenses relating to domestic animals),
- ORC Chapter 2923 (conspiracy, attempt, and complicity; weapons control; corrupt activity), or
- ORC Chapter 2925 (drug offenses),

from knowingly owning, possessing, having custody of, or residing in a residence with an unsprayed or unneutered dog older than 12 weeks of age, or a dangerous dog for a three-year period. This three year period is from the date a person is released from incarceration or if the person was not incarcerated from the release from other sanctions (*Department of Rehabilitation and Corrections programs are exempted*). Further, any such felon must microchip any dog owned, possessed by, or in the custody of the felon. Failure to do so is a first degree misdemeanor.

EXHIBIT 1

PRE- H.B.14 PROCESS

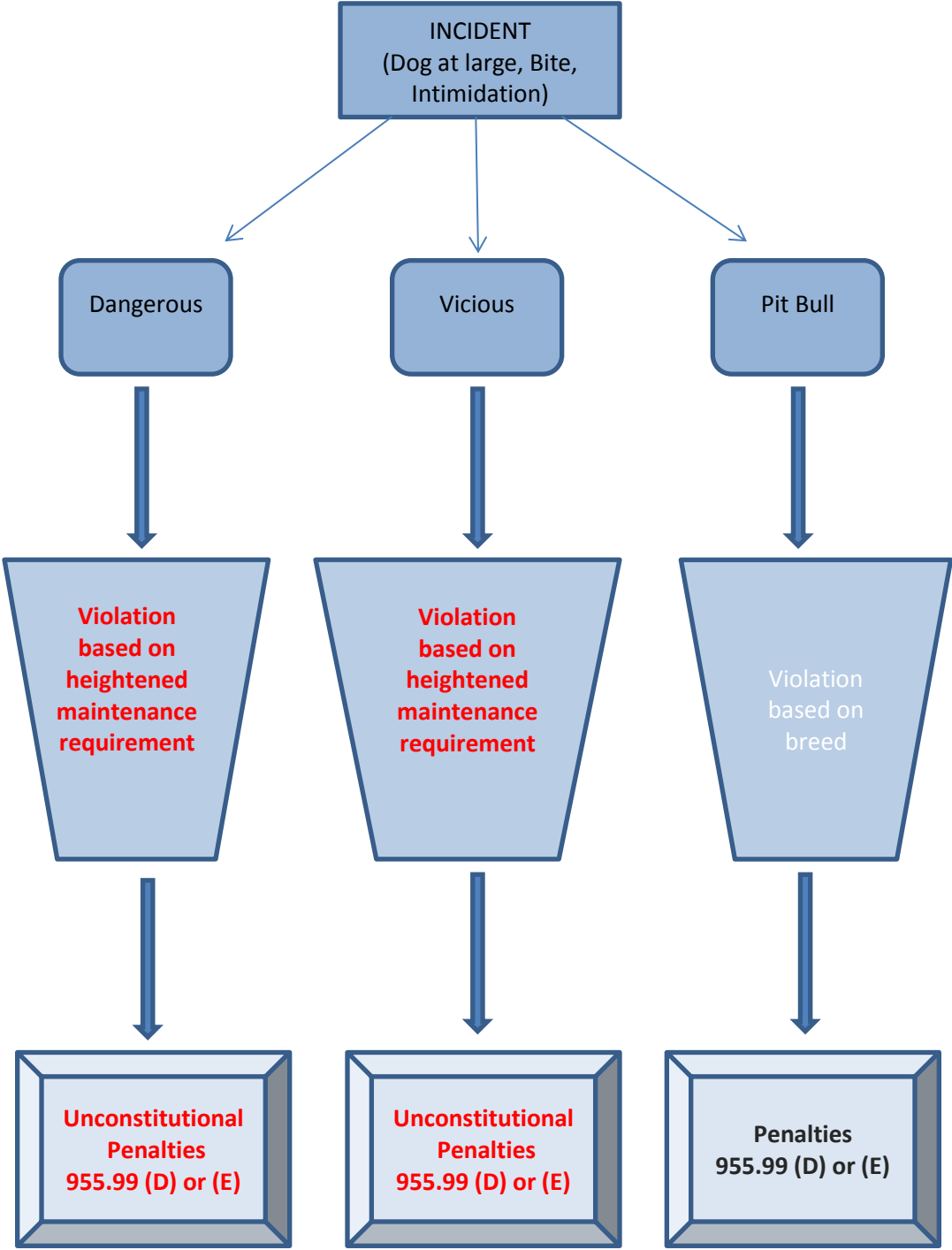


EXHIBIT 2 POST H.B. 14 PROCESS

INITIAL INCIDENT Prior to Dog's Designation/ Reasonable Standard of Care (Track I)

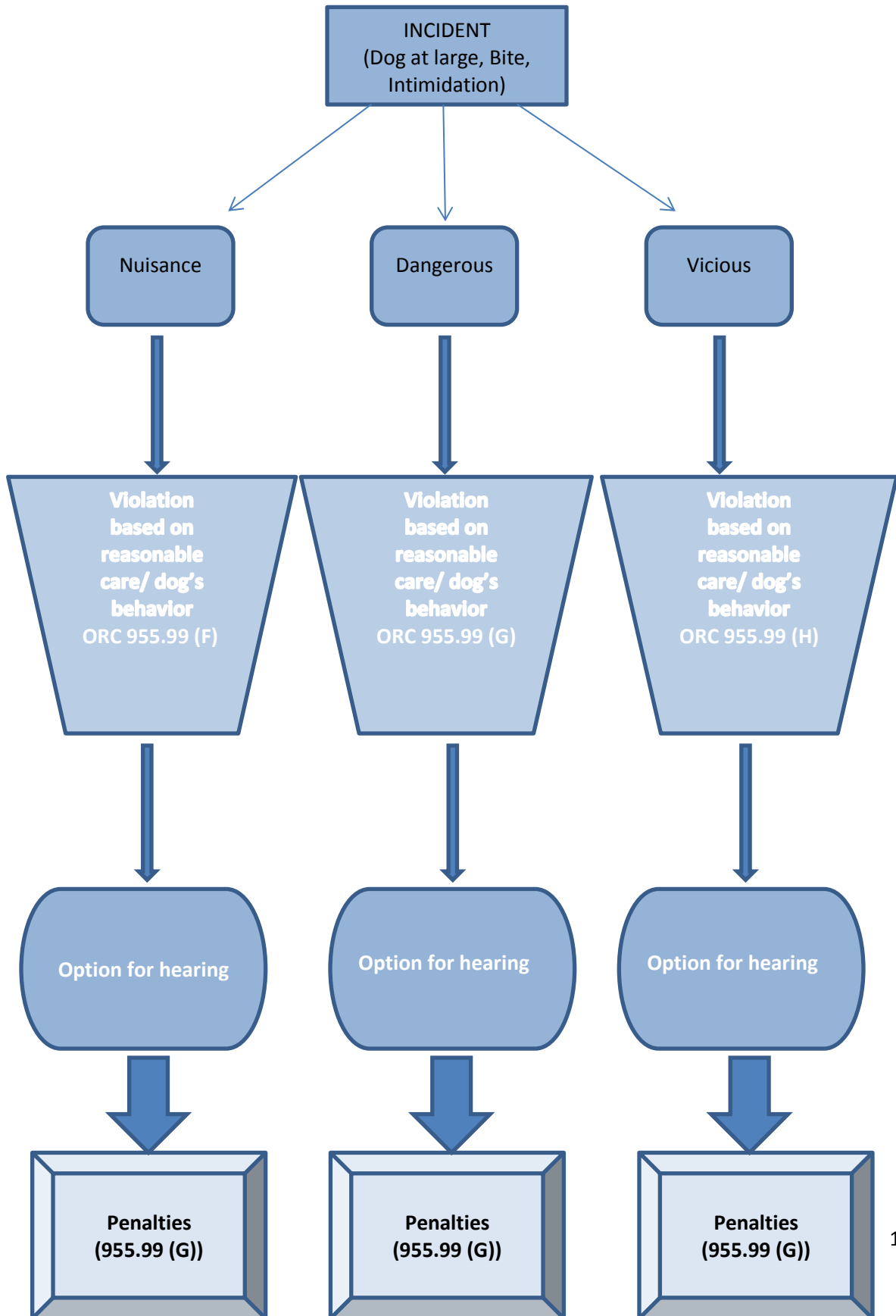


EXHIBIT 3
POST H.B. 14 PROCESS

INCIDENT SUBSEQUENT TO DESIGNATION
(Track II)

